



0000119705

ORIGINAL

ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

Arizona Corporation Commission

DOCKETED

DEC 06 1999

RECEIVED
1999 DEC -6 P 4 08AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR APPROVAL OF ITS
PLAN FOR STRANDED COST RECOVERY

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF FILING OF ARIZONA
PUBLIC SERVICE COMPANY OF
UNBUNDLED TARIFFS PURSUANT TO A.A.C.
R14-2-1601 ET. SEQ.

DOCKET NO. E-010345A-97-0773

IN THE MATTER OF COMPETITION IN THE
PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. RE-00000C-94-0165

STAFF'S NOTICE OF FILING

Staff of the Arizona Corporation Commission hereby files testimony and comments
regarding the Code of Conduct filed by Arizona Public Service Company.

RESPECTFULLY SUBMITTED this 6th day of December, 1999.

By:

Janet Wagner

Teena I. Wolfe

Arizona Corporation Commission

Legal Division

(602) 542-3402

TABLE OF CONTENTS

INTRODUCTION	1
ARIZONA PUBLIC SERVICE COMPANY'S PROPOSED CODE OF CONDUCT	3
SUMMARY OF ARIZONA RULES RELATING TO CODES OF CONDUCT	8
STAFF'S PROPOSED CODE OF CONDUCT	16

1 Original and ten copies of the
2 foregoing filed this _____ day
of December, 1999 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

5 A copy of the foregoing was
6 mailed this _____ day
7 of December, 1999 to:

8 All Parties on the Service List
9 for RE-00000C-94-0165
10
11 _____
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**STATE OF ARIZONA
BEFORE THE ARIZONA CORPORATION COMMISSION**

**RE: In the Matter of the Arizona Public) Docket Nos. E-01345A-98-0473,
Service Company Settlement Agreement) E-01345A-97-0773,
Code of Conduct) RE-00000C-94-0165**

**DIRECT TESTIMONY
OF
GRETCHEN MCCLAIN**

On behalf of:

The Arizona Corporation Commission

Staff

December 6, 1999

**La Capra Associates
333 Washington Street
Boston, MA 02108
(617) 557-9100**

INTRODUCTION

Q. STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Gretchen McClain. My business address is La Capra Associates, 333 Washington Street, Boston, MA 02108.

Q. PLEASE DESCRIBE YOUR FIRM.

A. La Capra Associates (LCA) was formed in 1980. Our focus has traditionally been on issues relating to the energy industry, including but not limited to: cost of service and rate design, stranded cost estimation, market price forecasting, rate unbundling and general restructuring issues, customer shopping analyses, procurement of power for large customers, as well as market analysis and some purchasing of power for small utilities. LCA has also developed and conducted the Boston Taxi Medallion Auction.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND QUALIFICATIONS.

A. I am a Senior Consultant at La Capra Associates where I have been employed for one and a half years. Prior to joining LCA, I was employed at the Tellus Institute in their Energy Group for eight years.

Q. HAVE YOU PREVIOUSLY TESTIFIED ON PUBLIC UTILITY CODES OF CONDUCT, COST OF SERVICE, COST ALLOCATION AND RATEMAKING ISSUES?

A. Yes. I have testified before the Delaware Public Service Commission on the issues of Delmarva Power & Light's Proposed Code of Conduct and Cost Accounting Manual. I have also testified before the Pennsylvania Public Utility Commission, the Colorado Public Utility Commission, and the Rhode Island Public Utilities Commission. My full resume is provided as Exhibit 1 to this testimony.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

2 A. My testimony will address the Arizona Public Service's (APS or the Company) proposed
3 Code of Conduct in this proceeding.

4 Q. PLEASE SUMMARIZE YOUR RECOMMENDATION WITH RESPECT TO THE
5 COMPANY'S PROPOSED CODE OF CONDUCT.

6 A. I recommend that the Commission reject APS' proposed Code of Conduct as it does not
7 meet the criteria for an Arizona Code of Conduct outlined in the Arizona Electric
8 Competition Rules. Furthermore, I recommend that the Commission require APS to
9 adopt the Staff's Proposed Code of Conduct, which meets the requirements of the
10 Arizona Rules. (Exhibit 2 to this testimony).

11 Q. HAVE YOU PREPARED ANY EXHIBITS TO ACCOMPANY YOUR TESTIMONY?

12 A. Yes. In addition to Exhibit 1 and 2, discussed above, I have attached as Exhibit 3 to this
13 testimony a copy of APS' submitted Code of Conduct.

14 Q. PLEASE EXPLAIN HOW YOUR TESTIMONY IS ORGANIZED.

15 A. Initially, I will describe Arizona Public Service Company's proposed Code of Conduct.
16 Next I will summarize the Arizona Electric Competition Rules as they pertain to the
17 requirements for Arizona Utility Codes of Conduct, as outlined in R14-2-1616.
18 Following this, I will review APS' proposed Code of Conduct in light of the Arizona
19 Rules. Finally, I will present Staff's proposed Code of Conduct and detail the benefits of
20 this Code of Conduct.

1 **ARIZONA PUBLIC SERVICE COMPANY'S**

2 **PROPOSED CODE OF CONDUCT**

3 Q. WHAT ARE APS' STATED GOALS FOR ITS PROPOSED CODE OF CONDUCT?

4 A. APS states that:

5 "APS is committed to establishing standards of conduct that will produce
6 confidence in the integrity of the competitive retail electric market and that
7 will be consistent with the requirements of the Electric Competition
8 Rules."

9 Q. DOES APS' PROPOSED CODE OF CONDUCT ACCOMPLISH THOSE TWO
10 GOALS?

11 A. No, it does not. APS' Code of Conduct requires more structure and specificity so that it
12 will not hinder competition in the retail electric market and so that it will comply with the
13 Arizona Electric Competition Rules (the Rules). The remainder of this testimony will
14 focus on what would be required in a Code of Conduct to ensure that those goals would
15 be met.

16 Q. HOW WILL THIS SECTION OF YOUR TESTIMONY BE STRUCTURED?

17 A. This section will focus on providing a brief overview of APS' proposed Code of Conduct.
18 In subsequent sections, I provide a discussion of the conflict between the proposed Code
19 of Conduct and the goals of promoting competition in the retail electric market and
20 satisfying the Rules.

1 Q. PLEASE DESCRIBE ARIZONA PUBLIC SERVICE COMPANY'S PROPOSED
2 CODE OF CONDUCT.

3 A. Arizona Public Service Company submitted a Code of Conduct (COC or Code) for
4 Approval on October 28, 1999 pursuant to the Opinion and Order, Decision No. 61973.
5 APS' Code of Conduct is comprised of seven sections. A copy of APS' submitted Code
6 is attached as Exhibit 3.

7 Q. PLEASE PROVIDE AN OUTLINE OF THESE SEVEN SECTIONS.

8 A. The Code can be summarized as follows:

- 9 • Definitions
- 10 • General
- 11 • Financial
- 12 • Separation of Functions
- 13 • Access to Information
- 14 • Transactions with Affiliates
- 15 • Dissemination, Education, and Compliance

16 Q. PLEASE DESCRIBE THE MATERIAL PRESENTED IN THE DEFINITIONS
17 SECTION OF APS' CODE.

18 A. Section 1 describes the terms which APS will use in the Code.

19 Q. PLEASE DESCRIBE THE GENERAL SECTION.

20 A. This section states that all employees and authorized agents of APS are required to
21 comply with the Code. It also states that failure to comply may result in unspecified
22 disciplinary actions.

1 Q. PLEASE DESCRIBE THE FINANCIAL SECTION OF APS' CODE.

2 A. This section states, without definition or specifics, that APS will not engage in cross-
3 subsidization of its Affiliate, and that the costs and revenues of the competitive and
4 noncompetitive activities of the Company will be segregated. Further, this section states
5 that APS will maintain separate books and records for its Affiliates and the Distribution
6 Company.

7 Q. PLEASE DESCRIBE THE SEPARATION OF FUNCTIONS SECTION OF APS'
8 CODE.

9 A. This section is comprised of three subsections. The first subsection describes how the
10 competitive and the noncompetitive sectors of the Utility will be operationally separate.
11 The second subsection describes how tariffs will be administered. The third subsection
12 describes the boundaries of behavior for APS with respect to promoting, selling, and
13 advertising its competitive services.

14 Q. PLEASE DESCRIBE THE ACCESS TO INFORMATION SECTION OF APS' CODE.

15 A. This section states that the Company will not distribute non-public customer information
16 to an Affiliate or other business entity without the consent of the customer. In addition, it
17 states that system information will be provided on a non-discriminatory basis to both
18 Affiliates and non-Affiliates.

19 Q. PLEASE DESCRIBE THE TRANSACTIONS WITH AFFILIATES SECTION OF APS'
20 CODE.

21 A. In this section, APS outlines how transactions between APS and its Affiliates would be
22 managed. Information provided in this section includes: a statement regarding the

1 appropriate accounting for these transactions, rules for governing the prices to be paid for
2 Goods and Services purchased by or from Affiliates, and the potential development of
3 policies and procedures to govern the accounting for such transactions.

4 Q. PLEASE DESCRIBE THE DISSEMINATION, EDUCATION, AND COMPLIANCE
5 SECTION OF APS' CODE.

6 A. This section describes how the Code will be distributed to APS employees and agents,
7 and how employees will be trained on the provisions of the Code. In addition, this
8 section outlines the potential disciplinary actions which could result from an employee's
9 violation of the Code.

10 Q. AFTER REVIEWING APS' PROPOSED CODE DID YOU FIND THAT THE CODE
11 WOULD CREATE A LEVEL PLAYING FIELD FOR ALL PARTICIPANTS IN
12 RETAIL ELECTRIC COMPETITION IN ARIZONA?

13 A. No, I did not. As written, APS' Code could provide the Company a competitive
14 advantage over third party competitors.

15 Q. WHICH SECTIONS OF APS' CODE COULD BE REDESIGNED TO BETTER
16 ENSURE THE INTEGRITY OF THE RETAIL ELECTRIC GENERATION MARKET?

17 A. Of the seven sections discussed above, the following sections are of serious concern, and
18 will be the primary focus of my testimony:

- 19 • Section 3: Financial,
- 20 • Section 4: Separation of Functions, and
- 21 • Section 6: Transactions with Affiliates.

1 Q. IN ADDITION, DO YOU FIND APS' CODE TO BE A SATISFACTORY TOOL TO
2 PREVENT THE POTENTIAL CROSS-SUBSIDIZATION OF THE AFFILIATE BY
3 THE DISTRIBUTION UTILITY RATE PAYERS?

4 A. No, I do not. Although the Code states that APS' intent is to not engage in cross-
5 subsidization of its Affiliates by its regulated ratepayers, it does not establish substantive
6 procedures to ensure that this does not occur. Without more substantive and specific
7 procedures, APS may claim that anti-competitive actions are in compliance with the
8 Code, and other entities may claim that appropriate behavior is not in compliance with
9 the Code. The lack of specificity denies all parties a meaningful tool to oversee APS'
10 actions with respect to its competitive activities. I will elaborate on the lack of protection
11 for ratepayers and other retail electric service providers in the next section of my
12 testimony.

SUMMARY OF ARIZONA RULES

RELATING TO CODES OF CONDUCT

Q. PLEASE DESCRIBE THE CONTENTS OF ACC R14-2-1616.

A. CC R14-2-1616 consists of two subsections. Subsection A states affected to file a Code of Conduct for approval within 90 days of the Rules going into effect “to prevent anti-competitive activities.”

According to R14-2-1616 Subsection B, APS' Code of Conduct must include the following:

- 1) Appropriate **procedures** to prevent cross-subsidization between the Utility Distribution Company and any Competitive Affiliates from occurring (Emphasis added);
- 2) Appropriate **procedures** to ensure that the Utility Distribution Company's Competitive Affiliate does not have exclusive access to confidential customer information (Emphasis added);
- 3) Guidelines to limit the joint employment of personnel by both the Utility Distribution Company and its Competitive Affiliate;
- 4) Appropriate guidelines governing the use of the Company's name or logo by its Competitive Affiliate;

- 1 5) Appropriate **procedures** to ensure that other market participants are not unfairly
2 disadvantaged due to preferential treatment of the Utility Distribution Company to
3 its own Affiliate (Emphasis added);
- 4 6) Appropriate **procedures** to govern transactions between a Utility Distribution
5 Company and its Competitive Affiliate (Emphasis added);
- 6 7) Appropriate policies to eliminate joint advertising, joint marketing, or joint sales by
7 a Utility Distribution Company and its Competitive Affiliate;
- 8 8) Appropriate policies to ensure that there is no representation that customers will
9 receive better service as a result of the affiliation; and
- 10 9) Complaints concerning violations of the Code should be handled under the
11 procedures established in R14-2-212.

12 Q. DOES APS' CODE OF CONDUCT SATISFY THE REQUIREMENTS OUTLINED IN
13 R14-2-1616?

14 A. No, it does not.

15 Q. ARE THERE ANY REQUIREMENTS WHERE APS' PROPOSED CODE IS
16 SATISFACTORY?

17 A. Yes. The Code satisfies requirements 2, 4, 6 and 8, but demands substantive improvement
18 with respect to all other requirements listed in R14-2-1616, subsection B in order to
19 comply with the Rules.

20 Q. WOULD YOU PLEASE EXPLAIN HOW APS' SUBMITTED CODE FALLS SHORT
21 OF THE FIRST REQUIREMENT OF R14-2-1616 SUBSECTION B?

1 A. Yes. Requirement 1 mandates that appropriate procedures be followed in order to ensure
2 that cross-subsidization is not occurring. The Company's COC only states the
3 Company's intention that it will not cross-subsidize its Affiliate with its regulated
4 distribution utility business (APS COC Section 3.), but does not offer specific accounting
5 procedures which would allow the Commission to verify that cross-subsidization is not
6 occurring. This creates problems for both Distribution Utility ratepayers, third party
7 competitive electric retail suppliers, and APS. Ratepayers cannot be certain that they are
8 not paying higher than necessary rates due to cross-subsidization of the Affiliate, third
9 party competitors cannot easily identify Code violations, and APS would be perpetually
10 at risk of being challenged for Code violations.

11 Q. WHAT DO YOU RECOMMEND APS' PROPOSED CODE BE MODIFIED TO
12 REMEDY THIS PROBLEM?

13 A. I recommend that the Company be required to develop a Cost Accounting Manual
14 (CAM) which will identify how all transactions should be recorded on the Company's
15 books. In addition to the CAM, APS should be required to submit annual reports
16 indicating how the cost allocation procedures/percentages described in the CAM will be
17 modified for use in the proceeding year, and what the annual cost allocations are to the
18 Distribution utility and each of APS' competitive activities. This way the Commission
19 has an ongoing record of the way in which cost accounting is conducted at APS and can
20 regulate how these transactions change over time to evaluate if these changes occur in a
21 reasonable way.

1 Q. IS THE REQUEST TO DEVELOP A CAM CONSISTENT WITH APS' CODE
2 SECTION 6.4: POLICIES AND PROCEDURES?

3 A. Yes. In Section 6.4 of APS' Code it states:

4 *"Policies and Procedures.* APS shall maintain, or cause to be maintained,
5 written policies and procedures regarding the accounting and segregation
6 of costs as between APS and an Affiliate, which policies and procedures
7 shall be made available to the Commission on request."

8 Q. WHY IS THE DEVELOPMENT OF A CAM IMPORTANT FOR APS FROM A
9 BUSINESS PERSPECTIVE AS WELL AS TO ITS RATEPAYERS AND TO THIRD
10 PARTY ENERGY SERVICE PROVIDERS?

11 A. Without clearly identified accounting rules and procedures, APS would be open to
12 accusations that it was cross-subsidizing its competitive activities with its Utility
13 Distribution services. This could lead to numerous proceedings before the Arizona
14 Corporation Commission, requiring the time and effort of all parties unnecessarily.
15 Clearly defined accounting procedures, maintained in a CAM, provide a benchmark for
16 the Commission to use in determining whether or not cross-subsidization is occurring.
17 Thus, the Commission would be in a position to actually enforce the Code, and the
18 Company would be protected from frivolous accusations.

19 Q. PLEASE EXPLAIN WHY APS' PROPOSED CODE VIOLATES THE THIRD
20 REQUIREMENT OF THE RULES OUTLINED IN R14-2-1616?

1 A. Requirement 3 mandates that the Company provide appropriate guidelines to limit the
2 sharing of personnel between the Utility Distribution Company and its competitive
3 affiliate. APS states in Subsection 4.1.2:

4
5 APS shall not use shared corporate support functions as a means to
6 transfer confidential customer information or create *significant*
7 opportunities for cross-subsidization of its competitive electric affiliates.

8 Except as permitted by this Code of Conduct, APS will not jointly employ
9 the same employees as its Affiliates. However, to provide for joint
10 corporate oversight, governance, and support, this provision shall not
11 prevent APS and any Affiliate from having common Directors and
12 Officers. An Affiliate may also contract for services from APS as long as
13 a written service agreement is executed and the charges for such services
14 comply with Section 6 of this Code of Conduct. (Emphasis added).

15
16 This Subsection essentially gives the Company the right to bypass the prohibition on joint
17 employment by utilizing “written service agreements” to contract for an employee’s
18 services. On an even more basic level, as the interests of the Distribution Utility and
19 APS’ competitive activities may differ, sharing Officers and Directors could lead to
20 decisions being made for the Distribution Company with the express purpose of
21 benefiting a competitive activity, that may not be in the best interest of the Distribution

1 Company. This type of employee sharing clearly creates an unacceptable conflict of
2 interest.

3 Q. WHAT EMPLOYEE SHARING GUIDELINES DO YOU THINK WOULD BE
4 APPROPRIATE TO ENSURE THAT THE INTERESTS OF RATEPAYERS AND
5 NON-AFFILIATE COMPETITIVE ELECTRIC SERVICE PROVIDERS ARE
6 MAINTAINED?

7 A. I recommend that the utility be prevented from sharing employees at any level of the
8 Company. In particular, the Company should not be allowed to share Directors or
9 Officers since the goals of the two business entities may not be aligned.

10 Q. PLEASE EXPLAIN HOW REQUIREMENT 5) HAS NOT BEEN ADEQUATELY
11 ADDRESSED IN APS' CODE?

12 A. Requirement 5) states that the utility must adopt procedures to ensure that the "Utility
13 Distribution Company does not give its competitive affiliate *any* preferential treatment
14 such that other market participants are unfairly disadvantaged or discriminated against."
15 (Emphasis added). The accounting procedures and the employee sharing proposals that
16 were set forth in APS' Code do not offer this protection. In addition, with respect to the
17 daily operations of the Distribution Utility, the proposed Code offers inadequate guidance
18 to APS employees. Employees may come into contact with customers and may have
19 opportunities to discuss the competitive offerings of the Affiliate. In these instances, the
20 employee should be required to notify the customer that such services are also available
21 from other energy service providers. Customers should be informed as to where they can
22 receive a list of alternative service providers at that time. In short, more specific

1 accounting procedures and procedures for employee/customer interactions should be
2 provided.

3 Q. PLEASE DESCRIBE THE CODE'S SHORTCOMINGS WITH RESPECT TO
4 REQUIREMENT 7.

5 A. Requirement 7 maintains that appropriate procedures governing transactions between the
6 Distribution Company and its Affiliate will be developed. While APS' Code does address
7 the Purchase and Sale of Goods and Services between APS and its Affiliate, it remains
8 silent on other important types of transactions. For instance, it remains silent on the issue
9 of the transfer of assets between APS and its competitive Affiliate. In addition, the Code
10 does not address the joint procurement of goods and services and the joint use of physical
11 assets, such as storage facilities, computer systems, or office space. All of these issues
12 must be clearly defined in order to create a Code which truly acts as a tool to prevent
13 cross-subsidization and to promote a level playing field for competition in Arizona.

14 Q. FINALLY, WILL YOU ADDRESS HOW APS' CODE FAILS TO SATISFY
15 REQUIREMENT 9) OF R14-2-1616?

16 A. This requirement, which mandates that complaints be handled in accordance with the
17 process outlined in R14-2-212, was simply omitted from APS' Code. In order to make
18 the Code a useful document, there must be a defined procedure by which complainants
19 can challenge APS if they feel APS has violated its Code. Requirement 9) simply seeks
20 to provide the mechanism to do this in ensuring that all complaints will be processed
21 under the procedures set forth in R14-2-212.

1 Q. GIVEN THAT APS' PROPOSED CODE FAILS TO MEET ALL OF THE
2 REQUIREMENTS OF SUBSECTION B OF R14-2-1616, DO YOU RECOMMEND
3 THAT THE COMMISSION APPROVE APS' CODE OF CONDUCT?

4 A. No, I do not. As written, the Code would not be effectively enforceable and would not
5 provide the level playing field that the Rules sought the Code to provide. In the
6 following section I describe Staff's proposed Code of Conduct, which does meet the
7 requirements of R14-2-1616, and which would offer all parties more substantive grounds
8 to evaluate the actual performance of the Company in maintaining appropriate cost
9 relationships between the Distribution Company and its competitive Affiliate. It would
10 be my recommendation that the Commission consider adopting Staff's proposed Code of
11 Conduct. The reasons for this recommendation are fully detailed in the next section of
12 my testimony.

STAFF'S PROPOSED CODE OF CONDUCT

Q. IN THE PREVIOUS SECTION OF YOUR TESTIMONY YOU CRITIQUE THE COMPANY'S CODE AND CONCLUDE THAT IT DOES NOT MEET THE REQUIREMENTS OF THE ARIZONA RULES. WHY HAS STAFF PROPOSED AN ALTERNATIVE TO APS' PROPOSED CODE?

A. A simple evaluation of APS' Code of Conduct would not have provided the Commission with concrete examples of the type of language and provisions which would satisfy the Arizona Rules. Given the pace of the proceeding and the specificity of the comments, providing an alternative Code was the most expedient means to elucidate the comments laid out in this testimony. The Staff's proposed Code is provided in ACC Exhibit_(GM-3).

Q. PLEASE DESCRIBE THE ALTERNATIVE CODE YOU ARE SUPPORTING IN YOUR TESTIMONY.

A. The Staff's proposed Code is comprised of sixteen sections. For the most part, language which was appropriate and useful in APS' proposed Code was incorporated into the Staff's proposed Code. In order to facilitate an organized presentation of Staff's proposed Code, those sections which are largely consistent with similar sections of APS' proposed Code will not be addressed. A complete list of the Staff's proposed Code sections is as follows:

I. Definitions

II. Applicability of the Code of Conduct

III. Treatment of Similarly Situated Persons

1 IV. Use of Confidential Customer Information

2 V. Use of the Bill and Promotions Within the Bill Envelope

3 VI. Customer Telephone Calls

4 VII. Prohibition on Suggestion of Utility Advantage

5 VIII. Accounting for Costs

6 IX. Reporting Requirements

7 X. Separation Requirements

8 XI. Transfers of Goods and Services

9 XII. Transfers of Assets

10 XIII. Joint Marketing

11 XIV. Dissemination, Education, and Compliance

12 XV. Procedure for Modification of the Code of Conduct

13 XVI. Dispute Resolution

14 Q. WHICH SECTIONS OF THE STAFF'S PROPOSED CODE WILL YOU BE
15 DISCUSSING IN THIS SECTION OF YOUR TESTIMONY?

16 A. I will be addressing Sections: I, V, VI, VIII, IX, X, XII, XV, and XVI.

17 Q. PLEASE DESCRIBE HOW THE DEFINITION SECTION (SECTION I) OF THE
18 STAFF'S PROPOSED CODE WAS DEVELOPED?

19 A. Section I contains a list of definitions of terms used in the Code. Where applicable, these
20 definitions are consistent with the use of these terms in the Arizona Rules. For terms not
21 listed in the Rules, the definitions of the terms have been specified to be as exact as
22 possible to avoid any confusion in the interpretation of Code requirements.

1 Q. PLEASE DESCRIBE SECTION V, USE OF THE BILL AND PROMOTIONS WITHIN
2 THE BILL.

3 A. This section outlines the use of the Company's bill in such a manner as to provide equal
4 access to billing services for APS' Competitive Affiliate as well as other Competitive
5 Electric Service Providers. Reciprocally, this section also ensures that if a customer
6 requests that his noncompetitive services be billed on a consolidated bill by a
7 Competitive Electric Service Provider, that this request will be granted to all Competitive
8 Electric Service Providers on a non-discriminatory basis.

9 Q. PLEASE DESCRIBE SECTION VI, CUSTOMER TELEPHONE CALLS.

10 A. This section is included to ensure that APS and its employees do not inadvertently or
11 intentionally engage in steering Distribution Service customers to APS' Competitive
12 Affiliate. The provision that the Competitive Affiliate and the Distribution Utility
13 maintain separate telephone numbers, combined with a restriction on joint employment,
14 should go far to ensure that customers are not directed to APS' Affiliate to the exclusion
15 of other Competitive Electric Service Providers. This is an important component in
16 ensuring that APS competitive activities do not have better access to Distribution Utility
17 customers than third party energy service providers.

18 Q. PLEASE DESCRIBE SECTION VIII, ACCOUNTING FOR COSTS.

19 A. Accounting for costs is one of the most important sections of the Staff's proposed Code.
20 This section seeks to rectify some of the omissions in APS' proposed Code by providing
21 a clear directive for APS to develop a Cost Accounting Manual to define how costs
22 would be accounted for with respect to APS and its competitive activities. Since the

1 CAM ties APS to specific accounting procedures for each transaction, it gives the
2 Commission and APS a record of how these activities are accounted for, and allows the
3 Commission to watch for cost shifts, which may occur over time.

4 It is important to stress that as APS and its Competitive Affiliates evolve and change, so
5 may the CAM. Therefore, it is critical to maintain annual reports detailing the schedules
6 of allocators used to allocate costs between the APS' noncompetitive and competitive
7 activities. If the Commission, upon review of the total costs allocated to the Distribution
8 Utility and the shifts in the allocators used in the CAM, deems that the cost sharing is
9 inappropriate, it will have the information to determine that APS is in violation of the
10 Code. More optimistically, the Commission could prevent any such inappropriate cost
11 shifting from occurring by informing the Company that the Company's proposed changes
12 in the CAM would not be acceptable if there were a consistent pattern of unjustifiable
13 increased cost burdens to APS' ratepayers.

14 Q. YOU HAVE ALREADY BRIEFLY DISCUSSED SECTION IX, REPORTING
15 REQUIREMENTS. COULD YOU PLEASE ELABORATE ON THIS SECTION?

16 A. Yes. This section is key in making the Code a viable tool to ensure a level playing field
17 for competition in Arizona. This section requires APS to provide annual reports detailing
18 cost and operational information, which would allow the Commission to determine that
19 APS is in compliance with its Code. The reporting requirements essentially cover two
20 areas: violations of the Code due to extraordinary circumstances, and Cost Reporting
21 information and CAM modification. By requiring these types of reports from the

1 Distribution utility annually, the Code becomes an enforceable and meaningful
2 document.

3 Q. WITH RESPECT TO SECTION X, SEPARATION REQUIREMENTS, WHAT ARE
4 THE MAJOR DIFFERENCES BETWEEN THE STAFF'S PROPOSED CODE AND
5 APS' PROPOSED CODE?

6 A. The major difference is in regard to employee sharing and the use of common Officers
7 and Directors for the Distribution Utility and its Affiliates. As discussed in the previous
8 section, Officers and Directors may have different goals for the competitive and
9 noncompetitive activities of APS. To allow joint Officers and Directors may lead to
10 inappropriate decision-making and unfair cost shifting. In addition, if the Company is
11 allowed to share employees at other levels of the Company, the issues of steering,
12 information control, and cost accounting become much more difficult to monitor. For
13 these reasons, the best approach is to prevent the Company from sharing employees
14 between its competitive and noncompetitive activities.

15 Q. PLEASE DESCRIBE SECTION XII, TRANSFER OF ASSETS OF THE STAFF'S
16 PROPOSED CODE.

17 A. The transfer of assets section defines the terms by which assets may transfer from a
18 competitive activity to APS or from APS to a competitive activity. This is essential
19 because without a clear directive as to the cost basis with which assets will be transferred
20 between the noncompetitive and competitive services of APS, there is room for cost
21 shifting resulting in a cost advantage for APS' competitive activities.

1 Q. THE STAFF'S PROPOSED CODE INCLUDES TWO ADDITIONAL SECTIONS
2 WHICH WERE NOT ADDRESSED IN APS' PROPOSED CODE. COULD YOU
3 PLEASE ADDRESS SECTIONS XV, PROCEDURES FOR MODIFICATION OF THE
4 CODE OF CONDUCT AND XVI, DISPUTE RESOLUTION?

5 A. Yes. These two sections were included in order to give the Code of Conduct a means to
6 remain a living document. With a provision for making modifications to the Code, the
7 Commission and APS both have a mechanism for addressing sections of the Code which
8 no longer achieve the desired goals of the Code of Conduct.

9 The final section, section XVI, ensures that the Code meets the requirements of the Rules,
10 and provides the means for the Commission to enforce the Code.

11 Q. WHY DO YOU RECOMMEND THAT THE COMMISSION ADOPT THE STAFF'S
12 PROPOSED CODE OF CONDUCT?

13 A. The Staff's Proposed Code is superior to that provided by APS in that it meets the
14 requirements of the Rules and provides sufficient safeguards to ensure that APS'
15 competitive activities and third party energy service providers would be able to compete
16 in a level playing field. Without a well defined Code of Conduct, such as that provided
17 by the Staff, third party energy service providers may perceive or actually face cost
18 disadvantages that may prevent the development of a robust market for competitive
19 electric services in Arizona.

GRETCHEN McCLAIN**LA CAPRA ASSOCIATES**

Consultant

Gretchen McClain, Consultant, has been very active in restructuring work relating to the unbundling of rates, development of strandable costs estimates, and affiliate transactions issues. Ms. McClain has testified on behalf of several clients on topics such as: restructuring; cost of service and rate design; code of conduct and cost accounting; and interruptible rates cases. She has assisted in the development of an unbundling and strandable cost model along with developing estimates of strandable costs. Additionally, Ms. McClain completed a major literature search and survey of rate design practices, which resulted in a white paper for the National Association of Regulatory Utility Commissioners (NARUC).

ACCOMPLISHMENTS

- Evaluated the proposed unbundled rates for Blackstone Valley Electric and Newport Electric in Rhode Island; Connecticut Light & Power and United Illumination in Connecticut; and Public Service Electric & Gas and Atlantic City Electric in New Jersey. She has appeared before the Rhode Island and Providence Plantation's Public Utilities Commission testifying on the topic of the revenue neutrality of Blackstone Valley Electric and Newport Electric unbundled rates.
- Ms. McClain also appeared before the Pennsylvania Public Utilities Commission evaluating the cost-of-service study and rate design proposal put forward by United Water Pennsylvania, Inc. She appeared before the Delaware Public Services Commission testifying on the policy implications of the Code of Conduct and Cost Accounting Manual proposed by Delmarva Power & Light. Additionally, she has appeared before the Colorado Public Utility Commission on the issue of Public Service Company's proposed Interruptible Rates.
- Interviewed New England state legislators, utility vice presidents, state public utility commissioners and commission staff, as well as energy services contractors, as preparation for her section of a report to the New England Governor's Conference. The report focused on historical trends in DSM and renewables; a projection of the likely progression of restructuring in New England; and the impact of restructuring on DSM and renewables development; and policy options to promote DSM and renewables development in a restructured utility environment.

- Assisted in the development of an in-house unbundling and strandable cost model, which estimates a range of potentially strandable costs, through her work estimating the potentially strandable costs for Public Service Company of Colorado for the Colorado Office of Energy Conservation. Also, she developed estimates of strandable costs for the four largest utilities in New York State. Ms. McClain also reviewed the performance based ratemaking factors filed by Rhode Island utility providers which will take effect in January 1997.
- Ms. McClain was active in conducting process evaluations for several energy conservation programs sponsored by the Ohio Department of Development Office of Efficiency, and some traditional ratemaking related work.
- Principal investigator of an evaluation of PG&E's PowerBreak Auction for interruptible rates on behalf of the California Public Utilities Commission. In addition to this project, her involvement in rate cases includes preparation of testimony and supporting documentation for the following rate and cost-of-service study (COSS) issues presented in the listed cases: Newport Electric Corporation's proposed COSS and rate design, Central Maine Power's proposals to change pricing structures, and to make an attrition adjustment, Bangor Hydro Electric Company's proposal for an attrition adjustment, and Blackstone Valley Electric's proposed COSS, class revenue responsibility, and load retention and economic development in rate riders.
- Completed a major literature search and survey of rate design practices throughout the U.S. in 1992-1993. This project resulted in a white paper for NARUC, co-authored with Dr. Stutz on how best to align utility rate designs with the principles of integrated resource planning. She has also worked in Iowa for the Consumer Advocate where she re-ran Iowa Southern's cost-of-service models using different class transmission allocators, particularly customer charges and block rate design, and verified all regression results of the utility.
- Member of the American Economics Association

EMPLOYMENT

Tellus Institute:
Economist,
1990 to 1998

EDUCATION

M.A., University of California
Economics, Completed all coursework and examinations towards the completion of her
Ph.D.

STAFF'S PROPOSED CODE OF CONDUCT

I. Definitions

The following terms in the code of conduct shall have the following meanings:

"APS" shall mean Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Bill" shall mean the billing invoice for noncompetitive services.

"Competitive Activities" shall mean "competitive electric affiliate(s)," "interim competitive activities," or "permitted competitive activities," as those terms are defined in this code of conduct.

"Competitive Electric Affiliate" shall mean any business enterprise related to APS that is also an electric service provider or provider of generation services.

"Competitive Services" shall mean those services described in A.A.C. R14-2-1601(7).

"Confidential Customer Information" shall mean any customer-specific information obtained by APS as a result of providing noncompetitive services or permitted competitive activities.

"Distribution Service" shall mean those services described in A.A.C. R14-2-1601(14).

"Electric Competition Rules" shall mean A.A.C. R14-2-1601 to -1617 as attached to this code of conduct, including all future amendments and modifications.

"Electric Service Provider" shall mean an entity as described in A.A.C. R14-2-1601(15).

"Extraordinary Circumstance" shall mean any situation which requires APS to act in a manner contrary to this code of conduct in order to protect public interest or safety. Examples include the following: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, to prevent equipment damage, or to prevent disconnection of system elements that could adversely affect reliability or safety; (b) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of a particular fuel; (c) a condition that requires implementation of emergency procedures as defined in the AISA operating protocols or protocols of any successor; or (d) an applicable law, regulation, court order, or regulatory agency directive requiring APS to act in a manner contrary to the code of conduct.

“Interim Competitive Activities” shall mean any competitive services, exclusive of those set forth in A.A.C. R14-2-1615(B), that APS may lawfully provide until December 31, 2002.

“Noncompetitive Services” shall mean those services described in A.A.C. R14-2-1601(29).

“Permitted Competitive Activities” shall mean those competitive services that APS may provide pursuant to A.A.C. R14-2-1615(B), except for any service provided as part of standard offer service.

“Same Terms” shall mean that APS shall provide noncompetitive services to its competitive activities and third parties on the same terms and conditions.

“Third Party” shall mean any electric service provider that does not fall within the definition of “APS” or “competitive activities,” as those terms are defined in this code of conduct.

II. Applicability of Code of Conduct

The following rules shall apply to the conduct of APS and its competitive activities, unless an extraordinary circumstance excuses compliance.

All employees and authorized agents of APS shall conduct their activities in compliance with the requirements of this code of conduct. Failure to conduct activities in compliance with this code of conduct will subject the employee to disciplinary actions as described in Section XIV of this code.

III. Treatment of Similarly Situated Persons

- A. APS shall apply its tariffs in the same manner to similarly situated entities. If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its competitive activities and all other third parties and their respective customers.
- B. APS shall process all similar requests for noncompetitive services and for permitted competitive activities in the same manner and in the same time period.
- C. APS shall provide access to distribution service specific information (including information about available distribution capability, transmission access, and curtailments) to its competitive activities and third parties concurrently and under the same terms and conditions.

IV. Use of Confidential Customer Information

- A. APS shall not provide confidential customer information to any party without the customer's written authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall inform any party seeking confidential customer information that such information may be released only after APS receives the customer's written authorization.

V. Use of the Bill and Promotions within the Bill Envelope

- A. If APS decides to include any amounts due for its competitive activities within the bill, APS shall provide notice of that determination to all third party electric service providers certified by the Arizona Corporation Commission. The notice shall state how third party billing data may be consolidated with APS' bill. APS shall include in its bill the amounts due for competitive services to any third party on the same terms, upon request.
- B. This provision shall not prevent APS' competitive activities or any third party from including amounts due for noncompetitive services in its own consolidated billing statement, as long as the customer receiving such consolidated billing statement has authorized APS' competitive activities or a third party, as applicable, to act as its agent for such purpose.
- C. APS shall not insert any advertising or promotional materials for any competitive activities or for any third party's competitive services into the envelope for the bill, nor shall APS print such advertising or promotional materials on the bill.

VI. Customer Telephone Calls

Telephone numbers used by APS for provision of noncompetitive services shall be different from those used for its competitive activities.

VII. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' competitive activities will receive preferential treatment in the provision of noncompetitive services or that any other advantage regarding the provision of noncompetitive services will accrue to that consumer.
- B. APS' name or logo shall not be used in written promotional advertising material circulated by a competitive electric affiliate.
- C. APS' personnel shall not specify a preference for any competitive service provided by APS' competitive activities over those of any third party.
- D. APS' personnel shall not specify a preference for any competitive service provided by a third party over any competitive service provided by any other third party.
- E. APS' personnel engaged in the provision of noncompetitive services shall either inform customers who inquire about competitive services that a list of electric service providers is available at no charge from the Arizona Corporation Commission on its website or by telephone, and shall provide the customers with the appropriate Arizona Corporation Commission website address and telephone number, or in the alternative, shall provide such customers with a copy of the current Arizona Corporation Commission list.
- F. APS shall not require that a consumer purchase any competitive service from APS' competitive activities as a condition to providing noncompetitive services.
- G. Prior to the divestiture of APS generation pursuant to Arizona Corporation Commission Decision No. 61973 (October 6, 1999), APS generation service will not be sold on a discounted basis to Standard Offer customers without the express permission of the Arizona Corporation Commission.

VIII. Accounting for Costs

- A. APS shall not cross-subsidize its competitive activities with rates and charges for noncompetitive services.
- B. All transactions between APS and its competitive activities shall be accounted for in accordance with APS' Cost Accounting Manual ("CAM"), which shall be

developed to describe the cost allocation of all transactions pertaining to APS and its competitive activities in a manner that ensures that there is no subsidization of the competitive activities by the noncompetitive services of APS. The CAM shall be submitted to the Director of the Utilities Division for review and approval. Beginning one year from the date of approval of the CAM, APS shall file annual updates to the CAM with the Director of the Utilities Division for review and approval. Any violation of the CAM shall constitute a violation of this code of conduct.

IX. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis:

- A. A list of all "extraordinary circumstances" excusing APS' compliance with this code of conduct and a report explaining the nature, cause, and duration of each incident.
- B. A report detailing all allocation methods used in the CAM and all modifications to these allocation methods.
- C. A report detailing all of the direct and indirect allocators used in the CAM and all modifications to these allocators, such that a history of allocator evolution may be maintained.
- D. A report detailing the costs attributable to noncompetitive services, permitted competitive activities, and interim competitive activities, separately for each business activity.

X. Separation Requirements

- A. APS and its competitive activities shall be separate corporate affiliates to the extent required by A.A.C. R14-2-1615 and Decision No. 61973 (October 6, 1999).
- B. APS and its competitive electric affiliates shall keep separate books and records. APS shall keep accounting records that set forth appropriate cost allocations between APS' noncompetitive services, and competitive activities. All records shall be kept in accordance with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles. As a precondition to transacting any business with APS, books and records of APS' competitive electric affiliates must be made available for inspection by the Commission to the extent reasonably necessary to determine compliance with this code of conduct.

- C. APS and its competitive activities shall not jointly employ the same employees. However, any board member or corporate officer of APS' holding company may serve in the same capacity with APS or with a competitive electric affiliate, but not both.

XI. Transfers of Goods and Services

- A. APS' tariffed goods and services shall be provided to third parties and competitive activities at the rates and under the terms and conditions set forth in the tariff.
- B. If APS sells nontariffed goods and services that were developed by APS for sale in the market to its competitive activities, the transfer price shall be the fair market value. Such goods and services shall be provided to APS' competitive activities and third parties on a non-discriminatory basis.
- C. All other transfers of nontariffed goods and services from APS to APS' competitive activities shall be at the higher of fully allocated cost or fair market value.
- D. If APS' competitive activities sell any goods and services to APS that were developed for sale by the competitive activity in the market, the transfer price shall be the fair market value.
- E. All other transfers of goods and services from APS' competitive activities to APS shall be at the lower of fully allocated cost or fair market value.

XII. Transfers of Assets

- A. Transfers of assets from APS to its competitive activities or contracts for a competitive activity's use of APS' assets, which are not described by Article 4.1 of the Settlement Agreement, shall be at the higher of book value or fair market value.
- B. Transfers of assets from APS' competitive activities to APS or contracts for APS' use of a competitive activity's assets shall be at the lower of book value or fair market value.

XIII. Joint Marketing

APS and its competitive electric affiliate(s) shall not jointly market their respective services.

XIV. Dissemination, Education, and Compliance

- A. Copies of this code of conduct will be provided to employees of APS and all competitive electric affiliates and those authorized agents of APS and all competitive electric affiliates. A copy of the code of conduct will be maintained on the APS' electronic bulletin board known as Vista Public Folders.
- B. Training on the provisions of the code of conduct and its implementation will be provided to APS employees and authorized agents.
- C. Compliance with the code of conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.
- D. Questions regarding this code of conduct should be directed to the Business Practices Department. Compliance with this code of conduct will be administered as part of the APS Standards of Conduct program.

XV. Procedure for Modification of the Code of Conduct

APS may request modifications to its code of conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.

XVI. Dispute Resolution

Any person or entity alleging that APS has failed to comply with the code of conduct may file a formal complaint with the Commission in accordance with the procedures established in R14-2-212.



Barbara A. Klemstine
Manager
Regulatory Affairs

Tel 602/250-2031
Fax 602/250-3399
e-mail: bklemsti@apsc.com
<http://www.apsc.com>

Mail Station 9909
P.O. Box 53999
Phoenix, AZ 85072-3999

COPY

October 28, 1999

RECEIVED

RECEIVED

OCT 28 1999

OCT 29 1999

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

A.C.C. - DOCKET CONTROL

RE: APS SETTLEMENT AGREEMENT - CODE OF CONDUCT
DOCKET NOS. E-01345A-98-0473, E-01345A-97-0773, RE-00000C-94-0165

Dear Sir or Madam:

Pursuant to the Opinion and Order, Decision No. 61973 of the above referenced Dockets, Arizona Public Service is filing a proposed Code of Conduct for Commission approval.

If you have any questions regarding this filing, please contact me at (602)250-2031.

Sincerely,

Barbara A. Klemstine
Manager
Regulatory Affairs

Cc: Docket Control (Original plus 18 copies)
Parties of Record

ARIZONA PUBLIC SERVICE COMPANY

Code of Conduct

Arizona Public Service Company ("APS") is committed to establishing standards of conduct that will produce confidence in the integrity of the competitive retail electric market and that will be consistent with the requirements of the Electric Competition Rules.

The following Code of Conduct shall apply to APS and, where indicated, its Affiliates.

Definitions

- 1.1 "Affiliate" or "Affiliates" means an Electric Service Provider related to APS in the manner described in A.A.C. R14-2-801 (1).
- 1.2 "APS" means Arizona Public Service Company in its capacity of providing Distribution Service and any other electric services permitted by law.
- 1.3 "Commission" means the Arizona Corporation Commission.
- 1.4 "Electric Competition Rules" means A.A.C. R14-2-1601 et. seq., as set forth in Decision No. 61969 (September 29, 1999).
- 1.5 "Distribution Service" means those services described in A.A.C. R14-2-1601 (14), i.e., "the delivery of electricity to a retail consumer through wires, transformers, and other devices that are not classified as transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission."
- 1.6 "Electric Service Provider" or "ESP" means a provider of competitive electric services, as defined in A.A.C. R14-2-1601 (16).

2 General

- 2.1 All employees and authorized agents of APS shall conduct their activities in compliance with the requirements of this Code of Conduct.

- 2.2 Failure to conduct activities in compliance with this Code of Conduct will subject the employee or agent to disciplinary actions described in Section 7.

3 *Financial*

- 3.1 *Subsidization.* APS shall not subsidize the competitive electric services provided by an Affiliate through any rate or charge for non-competitive electric services.
- 3.2 *Segregation.* Costs and revenues of APS will be segregated from costs and revenues of Affiliates in a manner sufficient to ensure that there is no subsidization of the business activities of Affiliates by any rate or charge for non-competitive services of APS.
- 3.3 *Books and Records.* APS will maintain its books of account and records separately from those of its Affiliates. As a precondition to transacting any business with APS, Affiliate books and records must be made available for inspection by the Commission to the extent reasonably necessary to determine compliance with this Code of Conduct.

4 *Separation of Functions*

4.1 *Operations.*

- 4.1.1 Except as otherwise permitted by law or in this Code of Conduct, APS shall operate as a separate corporate entity from any Affiliate.
- 4.1.2 APS shall not use shared corporate support functions as a means to transfer confidential customer information or create significant opportunities for cross-subsidization of its competitive electric affiliates. Except as permitted by this Code of Conduct, APS will not jointly employ the same employees as its Affiliates. However, to provide for joint corporate oversight, governance and support, this provision shall not prevent APS and any Affiliate from having common Directors or Officers. An Affiliate may also contract for services from APS as long as a written service agreement is executed and the charges for such services comply with Section 6 of this Code of Conduct.
- 4.1.3 Requests from Affiliates and non-affiliated ESPs and their customers for ACC-regulated services provided by APS shall be processed on a non-discriminatory basis.

4.2 *Administering Tariffs.*

- 4.2.1** Administration and enforcement of all Commission-approved tariffs for APS, including terms and conditions of service, will be conducted solely by employees and authorized agents of APS.
- 4.2.2** With respect to the terms and conditions of providing Distribution Services subject to ACC approval (including price, curtailments, scheduling and priority), APS shall not provide its Affiliates, or the customers of its Affiliates, any preferential treatment over non-affiliated ESPs or their customers as a result of such status as an Affiliate or customer of an Affiliate.
- 4.2.3** If a tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between an Affiliate and all other market participants and their respective customers.
- 4.2.4** APS shall not condition or otherwise tie any non-competitive service it provides nor the availability of discounts of rates or other charges or fees, rebates or waivers of terms and conditions of its service to the taking of any goods or services from an Affiliate.
- 4.2.5** Prior to the divestiture of APS generation pursuant to ACC Decision No. 61973 (October 6, 1999), APS generation will not be sold on a discounted basis to Standard Offer customers without the express permission of the ACC.

4.3 *Promotion, Sales and Advertising of Non-Distribution Services.*

- 4.3.1** APS' name or logo shall not be used in written promotional or advertising material circulated by an Affiliate unless the Affiliate discloses that: 1) the Affiliate is not the same company as APS and 2) customers do not have to buy the Affiliate's product in order to continue to receive Distribution Service at regulated rates from APS.
- 4.3.2** APS will not engage in joint advertising, marketing or sales with its Affiliate.
- 4.3.3** APS shall not promote, market, or sell an Affiliate's services for or on behalf of an Affiliate.
- 4.3.4** APS shall not state or imply in any advertising or customer communication that the provision of any Distribution Service, or the terms and conditions governing such services, are conditioned upon, related to or tied to the purchase of any other product or service from an Affiliate. APS shall not offer or provide advice

regarding an Affiliate to APS' customers nor state or imply that Distribution Service provided to an Affiliate is safer or more reliable than those provided to a non-Affiliate.

4.3.5 APS shall not offer or provide an Affiliate with advertising space in any APS written customer communication (e.g., billing) unless access is provided to non-Affiliates on the same terms and conditions.

5 Access to Information

5.1 *System Information.* APS shall provide an Affiliate and non-Affiliate ESPs access to Distribution Service-specific information (including information about available distribution capability, transmission access and curtailments) concurrently and under the same terms and conditions.

5.2 *Customer Information.* Non-public customer-specific information will not be provided by APS to an Affiliate or to a non-Affiliate unless release of such information is expressly authorized by the customer or the Commission or is otherwise authorized or required by law.

6 Transactions with Affiliates

6.1 *Accounting.* Except where regulatory requirements provide otherwise, transactions between APS and an Affiliate will be accounted for in accordance with Generally Accepted Accounting Principles.

6.2 *Purchase of Goods and Services from Affiliates.* APS shall not purchase goods and services from an Affiliate at a price that is above the market price of such goods and services or, where a market price for any particular good or service is not readily available, at a price that is above the Affiliate's fully allocated cost of providing the good or service.

6.3 *Sale of Goods and Services to Affiliates.* Goods and services sold by APS to an Affiliate shall be charged in accordance with any applicable tariff. Where a tariff is not applicable, such goods and services shall be sold at the market price or where there is no readily identified market price, at the fully allocated cost of providing the good or service.

6.4 *Policies and Procedures.* APS shall maintain, or cause to be maintained, written policies and procedures regarding the accounting and segregation of costs as between APS and an Affiliate, which

policies and procedures shall be made available to the Commission on request.

7 *Dissemination, Education and Compliance*

- 7.1 *Employee Access to Code of Conduct.* Copies of this Code of Conduct will be provided to employees of APS and all Affiliates and those authorized agents of APS and all Affiliates that are likely to be engaged in activities subject to the Code of Conduct. A copy of the Code of Conduct will be maintained on the Company's electronic bulletin board known as Vista Public Folders.
- 7.2 *Employee Training.* Training on the provisions of the Code of Conduct and its implementation will be provided to APS employees and authorized agents likely to be engaged in activities subject to the Code of Conduct.
- 7.3 *Compliance.* Compliance with the Code of Conduct is mandatory. An APS employee's or agent's failure or refusal to abide by or to act according to such standards may subject the employee or agent to disciplinary action, up to and including discharge from employment or termination of the agent's relationship with APS.

Questions regarding this Code of Conduct should be directed to the Business Practices Department. Compliance with this Code of Conduct will be administered as part of the APS Standards of Conduct program.